Quality Warranties

I. UCC Express Warranties [§§ 2-313 & 2A-210]

A. Elements

1. An affirmation of fact or promise
   - Whether a statement constitutes a warranty – as opposed to a mere opinion or commendation – depends on
     (1) the type of good sold, and
     (2) the circumstances of the sale

2. Made by the seller/lessor (or her agent) to the buyer/lessee

3. That the goods conform to the contract
   - If seller/lessor shows buyer/lessee a sample or model, the goods must conform to the sample or model.

B. The affirmation or promise must be part of the basis of bargain
   - Only need prove reasonable, not actual, reliance

C. No “magic words” are required.

II. UCC Implied Warranty of Merchantability [§§ 2-314 & 2A-212]

A. Seller/lessor must be a merchant – meaning she

1. deals in goods of the kind or

2. holds herself out as having expertise in goods of the kind.

B. If not waived or modified by agreement, the goods must:

1. pass without objection in the trade; and
2. if fungible, be of “fair average” quality; and
3. be fit for the ordinary purpose for which such goods are used; and
4. run, within variations permitted by agreement, of even kind, quality, and quantity within each units and among all units; and
5. be adequately contained, packaged, and labeled; and
6. conform to any promises or affirmation of fact on container or label.

C. No reliance required – Buyer/lessee need only prove that the warranty exists.

III. UCC Implied Warranty of Fitness for a Particular Purpose [§ 2-315; § 2A-213]
A. Elements
1. Seller/lessor knows or has reason to know that the buyer/lessee has a particular purpose in mind;
2. Seller/lessor knows or has reason to know that the buyer/lessee is relying on the seller’s/lessor’s advice and expertise in choosing a product suitable for that purpose; and
3. Buyer/lessee actually relies on the seller’s/lessor’s advice and expertise.
B. What is a “particular purpose”?  
1. “Majority Rule”: Something other than the good’s ordinary purpose.
2. “Minority Rule”: Particular purpose can also be the good’s ordinary purpose as long as the elements of § 2-315 (or § 2A-213) are met.
C. The seller/lessor need not be a merchant for this warranty to arise.

IV. CISG Warranties: Article 35 closely tracks Article 2
A. Express [Arts. 35(1) & 2(c)]
B. Implied
1. Merchantability [Art. 35(2)(a) & (d)] – not as strong as its UCC counterpart
2. Fitness for a Particular Purpose [Art. 35(2)(b)]
V. **Common Defenses**

A. **Disclaimer/waiver** (under § 2-316 or § 2A-214);

B. **Limitations** (under § 2-725 or § 2A-506);

C. **Assumption of risk** (if available under state law);

D. Failure to give **reasonable notice** of defect; and

- §§ 2-607(3)(a) & 2A-516(3) require a buyer/lessee to notify the seller/lessor of any breach within a reasonable time after he discovers or should have discovered any breach.

E. **Lack of privity**

1. **Vertical Privity**: the ability of a buyer/lessee to sue a seller/lessor other than its immediate seller/lessor for breach of warranty (*e.g.*, suing John Deere, not (just) Home Depot)

2. **Horizontal Privity**: the ability of a non-buyer/lessee who uses or is affected by a product to sue the seller/lessor for breach of warranty (*e.g.*, Sue buys a John Deere lawnmower from Home Depot, lawnmower injures Chris, Chris sues Home Depot). §§ 2-318 & 2A-216.

   a. **Alternative A (majority rule)**: family members or household guests of the buyer/lessee may sue for personal injuries caused by a breach of warranty

   b. **Alternative B**: “any natural person who may reasonably be expected to use, consume, or be affected by the goods” may sue for personal injuries caused by a breach of warranty

   c. **Alternative C**: “any natural person who may reasonably be expected to use, consume, or be affected by the goods” may sue for personal injuries, **property damage, or economic loss** caused by a breach of warranty

VI. **Quality Warranty Disclaimers/Limitations**

A. **§ 2-316(2)**: Subject to § 2-316(3), in order to exclude or modify

   1. IWOM, the disclaimer must

      a. mention merchantability **specifically** and

      b. **if written**, be **conspicuous**
2. IWOF, the disclaimer or modification
   a. must be in writing,
   b. must be conspicuous,
   c. but may use general language such as “There are no warranties which extend beyond those described in this document.”

B. § 2-316(3)
   1. Blanket Disclaimers: Unless the circumstances indicate otherwise, all implied warranties may be disclaimed by expressions such as “as is,” “with all faults,” “no warranties,” or other language which in the common understanding makes plain there are no implied warranties.
   2. Inspection: If the buyer, before purchasing, has examined the goods as fully as she desired or has refused to examine them, there is no implied warranty as to defects she should have discovered during inspection.
   3. Implied Waiver: Implied warranties may be excluded or modified by COP, COD, or UOT.

C. Limiting or Excluding Remedies
   1. § 2-316(4): Remedies for breach of warranty may be limited in accordance with §§ 2-718 (liquidated damages) & 2-719.
   2. § 2-719: The parties may agree to limit or alter the remedies available under Article 2, including making some other or reduced remedy the sole available remedy, as long as
      a. if the parties intend a remedy to be exclusive, the agreement must expressly say so;
      b. the limited or exclusive remedy is not unconscionable;
      c. circumstances don’t cause the limited or exclusive remedy to fail in its essential purpose (i.e., deprive either party of the substantial benefit of their bargain); and
      d. any limit on or exclusion of consequential damages is not unconscionable,
      e. provided that any limit on or exclusion of consequential damages in a consumer contract is prima facie unconscionable.
D. **Lease Warranties:** The comparable provisions of Article 2A are essentially the same, with two exceptions:

1. For a lessor to disclaim the IWOM, he **must** do so **in writing**.
2. For a lessor to disclaim the IWOF, he must use “**magic words.**”

E. **CISG Warranties**

1. Article 35 recognizes the parties’ ability to “agree otherwise,” suggesting that all implied warranties are subject to limitation or exclusion.
2. Article 35(3) relieves a seller from liability for a nonconformity that the buyer knew about or could not have been unaware of at the time the contract was formed.

VII. **Special Case: Finance Leases**

A. § 2A-209(1): Supplier’s express and implied warranties **run to the lessee.**

B. The **lessor** makes **no implied warranties** to the lessee. §§ 2A-212 & 2A-213.

   ♦ By definition, the finance lessor has nothing to do with the selection, manufacture, or supply of the goods. If the lessor does, then it is not a finance lessor, and the normal lease warranties apply.

C. § 2A-407: Breach of warranty by the supplier **does not** relieve the lessee of her **obligation to pay** the lessor,

   1. unless their contract provides otherwise, or
   2. unless the finance lease is also a **consumer lease,** § 2A-209 cmt. 3.

D. § 2A-209(3): Supplier and lessor are free to **modify or rescind** their contractual obligations, and any change is **binding on the lessee unless** the supplier has prior notice that the lessee has an interest under a finance lease.

   ♦ Thus, any warranty disclaimers included in the contract between the supplier and the lessor bind the lessee, **provided** that the lessee had the opportunity to read agreement between the supplier and the finance lessor before the lessee signed the lease agreement.